

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-fifth Legislature
Second Regular Session
2002

CHAPTER 268

HOUSE BILL 2357

AN ACT

AMENDING SECTIONS 38-1003, 38-1004 AND 38-1007, ARIZONA REVISED STATUTES;
RELATING TO THE LAW ENFORCEMENT OFFICERS MERIT SYSTEM COUNCIL.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-1003, Arizona Revised Statutes, is amended to
3 read:

4 38-1003. Powers and duties of council

5 The council, pursuant to recognized merit system principles of public
6 employment, shall from time to time:

7 1. Classify or reclassify all positions occupied by law enforcement
8 officers within the branch of government employing such THE officer and
9 recommend schedules of salary and other compensation payable for such THE
10 officer classification.

11 2. Fix and refix standards and qualifications of all positions so
12 classified.

13 3. Provide a plan for fair and impartial selection, appointment,
14 retention and separation or removal from service by resignation or dismissal
15 of all classified law enforcement officers. The provisions of paragraph 4
16 of this section shall apply to appointments.

17 4. Provide a plan for promotion of law enforcement officers which
18 shall give appropriate consideration to qualifications, record of
19 performance, seniority and conduct within the field of law enforcement.
20 Vacancies within a department shall be filled whenever possible by promotion
21 within a department, and shall be on the basis of competitive
22 examination. ~~Whenever~~ IF a vacancy occurs within a department the council
23 shall, upon request, SHALL certify to the head of the department the names
24 of five officers in the order of their relative excellence in the competitive
25 examination from which certified list the appointment or promotion may be
26 made.

27 5. Adopt such rules and regulations ~~as may be~~ necessary for the
28 orderly administration of the provisions of this article.

29 6. Hear and review appeals from any order of the department head in
30 connection with suspension, demotion, or dismissal of a classified law
31 enforcement officer. IF THE ORDER OF THE DEPARTMENT HEAD WAS FOR A
32 SUSPENSION GREATER THAN SIXTEEN HOURS, DEMOTION OR DISMISSAL AND THE COUNCIL
33 EXONERATES THE OFFICER, THE COUNCIL MAY AWARD, IN WHOLE OR IN PART, THE
34 REASONABLE COSTS AND ATTORNEY FEES THAT THE EMPLOYEE INCURRED IN CONNECTION
35 WITH THE APPEAL. THE AWARD OF ATTORNEY FEES BY THE COUNCIL SHALL NOT EXCEED
36 TEN THOUSAND DOLLARS. AN AWARD OF ATTORNEY FEES DOES NOT APPLY IF EITHER OF
37 THE FOLLOWING APPLIES:

38 (a) THE ORDER OF THE DEPARTMENT HEAD WAS NOT FOR DISCIPLINARY PURPOSES
39 BUT WAS FOR ADMINISTRATIVE PURPOSES SUCH AS A REDUCTION IN FORCE.

40 (b) THE DISCIPLINARY ACTION RELATED TO OFF-DUTY ACTIVITIES UNRELATED
41 TO THE REQUIRED DUTIES OF THE LAW ENFORCEMENT OFFICER. The council's
42 determination thereon shall be final except on appeal as provided in section
43 38-1004. IF THE DEPARTMENT HEAD APPEALS THE DECISION OF THE COUNCIL, THE
44 COUNCIL'S AWARD OF ANY COSTS OR ATTORNEY FEES TO AN OFFICER SHALL BE STAYED
45 PENDING THE CONCLUSION OF THE APPEAL. IF THE DEPARTMENT HEAD'S DECISION IS

1 UPHELD ON APPEAL, THE AWARD OF COSTS OR ATTORNEY FEES IN FAVOR OF THE OFFICER
2 SHALL BE REVERSED.

3 Sec. 2. Section 38-1004, Arizona Revised Statutes, is amended to read:
4 38-1004. Appeals; hearings

5 A. A classified law enforcement officer who is suspended, demoted or
6 dismissed by the department head, after a hearing and review before the merit
7 system council, may have the determination of the council reviewed upon writ
8 of certiorari in the superior court of the county in which the law
9 enforcement officer resides. If the determination of the council is
10 overruled by the court, the law enforcement officer shall be reinstated in
11 his THE OFFICER'S position and THE OFFICER shall be reimbursed for any
12 compensation withheld pending determination by the council and court.

13 B. IF THE ORDER OF THE DEPARTMENT HEAD WAS FOR A SUSPENSION GREATER
14 THAN SIXTEEN HOURS, DEMOTION OR DISMISSAL AND THE COURT EXONERATES THE
15 OFFICER, THE COURT MAY AWARD, IN WHOLE OR IN PART, THE REASONABLE COSTS AND
16 ATTORNEY FEES THAT THE OFFICER INCURRED IN THE COURT PROCEEDINGS. THE AWARD
17 OF ATTORNEY FEES BY THE COURT SHALL NOT EXCEED FIFTEEN THOUSAND DOLLARS. AN
18 AWARD OF ATTORNEY FEES DOES NOT APPLY IF EITHER OF THE FOLLOWING APPLIES:

19 1. THE ORDER OF THE DEPARTMENT HEAD WAS NOT FOR DISCIPLINARY PURPOSES
20 BUT WAS FOR ADMINISTRATIVE PURPOSES SUCH AS A REDUCTION IN FORCE.

21 2. THE DISCIPLINARY ACTION RELATED TO OFF-DUTY ACTIVITIES UNRELATED
22 TO THE REQUIRED DUTIES OF THE LAW ENFORCEMENT OFFICER. IF THE DEPARTMENT
23 HEAD APPEALS THE DECISION OF THE COURT, THE COURT'S AWARD OF ANY COSTS OR
24 ATTORNEY FEES TO AN OFFICER SHALL BE STAYED PENDING THE CONCLUSION OF THE
25 APPEAL. IF THE DEPARTMENT HEAD'S DECISION IS UPHELD ON APPEAL, THE AWARD OF
26 COSTS OR ATTORNEY FEES IN FAVOR OF THE OFFICER SHALL BE REVERSED.

27 C. IF A LAW ENFORCEMENT OFFICER OF A COUNTY, CITY OR TOWN DESCRIBED
28 IN SECTION 38-1007 APPEALS FROM A DECISION OF A DEPARTMENT HEAD IN CONNECTION
29 WITH THE LAW ENFORCEMENT OFFICER'S SUSPENSION GREATER THAN SIXTEEN HOURS,
30 DEMOTION OR DISMISSAL AND THE COUNTY, CITY OR TOWN MAINTAINS A MERIT SYSTEM
31 OR CIVIL SERVICE PLAN FOR ITS EMPLOYEES, AND THE MERIT SYSTEM OR CIVIL
32 SERVICE PLAN APPEALS BOARD EXONERATES THE OFFICER, THE MERIT SYSTEM OR CIVIL
33 SERVICE PLAN APPEALS BOARD MAY AWARD, IN WHOLE OR IN PART, THE REASONABLE
34 COSTS AND ATTORNEY FEES THAT THE LAW ENFORCEMENT OFFICER INCURRED IN
35 CONNECTION WITH THE APPEAL. THE AMOUNT OF THE AWARD BY THE MERIT SYSTEM OR
36 CIVIL SERVICE PLAN APPEALS BOARD SHALL NOT EXCEED TEN THOUSAND DOLLARS. IF
37 THE DEPARTMENT HEAD APPEALS THE DECISION OF THE MERIT SYSTEM OR CIVIL SERVICE
38 APPEALS BOARD, THE AWARD OF ATTORNEY FEES SHALL BE STAYED PENDING THE
39 CONCLUSION OF THE APPEAL. IF THE OFFICER APPEALS THE DECISION OF THE MERIT
40 SYSTEM OR CIVIL SERVICE PLAN APPEALS BOARD, OR OF THE CITY OR TOWN COUNCIL
41 OR BOARD OF SUPERVISORS IF THE CITY, TOWN OR COUNTY HAS NO SUCH BOARD, TO
42 COURT AND THE COURT EXONERATES THE OFFICER, THE COURT MAY AWARD, IN WHOLE OR
43 IN PART, THE REASONABLE COSTS AND ATTORNEY FEES THAT THE LAW ENFORCEMENT
44 OFFICER INCURRED IN CONNECTION WITH THE APPEAL. THE AWARD OF ATTORNEY FEES
45 BY THE GOVERNING BODY OR COURT SHALL NOT EXCEED FIFTEEN THOUSAND DOLLARS. AN

1 AWARD OF ATTORNEY FEES UNDER THIS SUBSECTION DOES NOT APPLY IF EITHER OF THE
2 FOLLOWING APPLIES:

3 1. THE ORDER OF THE DEPARTMENT HEAD WAS NOT FOR DISCIPLINARY PURPOSES
4 BUT WAS FOR ADMINISTRATIVE PURPOSES SUCH AS A REDUCTION IN FORCE.

5 2. THE DISCIPLINARY ACTION RELATED TO OFF-DUTY ACTIVITIES UNRELATED
6 TO THE REQUIRED DUTIES OF THE LAW ENFORCEMENT OFFICER. IF THE DEPARTMENT
7 HEAD APPEALS THE DECISION OF THE COURT, THE COURT'S AWARD OF ANY COSTS OR
8 ATTORNEY FEES TO AN OFFICER SHALL BE STAYED PENDING THE CONCLUSION OF THE
9 APPEAL. IF THE DEPARTMENT HEAD'S DECISION IS UPHOLD ON APPEAL, THE AWARD OF
10 COSTS OR ATTORNEY FEES IN FAVOR OF THE OFFICER SHALL BE REVERSED.

11 B. D. A department head shall have the right to have all council
12 policies and decisions reviewed upon writ of certiorari in the superior court
13 of the county in which the law enforcement officer resides and legal counsel
14 for the department head shall be provided by the county or city attorney in
15 whose jurisdiction the department lies.

16 Sec. 3. Section 38-1007, Arizona Revised Statutes, is amended to read:

17 38-1007. Exemptions

18 EXCEPT AS PROVIDED BY SECTION 38-1004, SUBSECTION C, the provisions of
19 this article shall not apply to:

20 1. A county having a population, according to the last federal census,
21 of less than two hundred fifty thousand inhabitants, unless the board of
22 supervisors of such county passes a resolution adopting the provisions of
23 this article.

24 2. A city or town with a population of less than fifteen thousand
25 inhabitants according to the last federal census, or with a full-time police
26 department of less than fifteen men, unless the city council of such city or
27 town passes an ordinance adopting the provisions of this article.

28 3. A city or town in which there is maintained a merit system or civil
29 service plan for its employees.

APPROVED BY THE GOVERNOR MAY 21, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 22, 2002.

Passed the House April 8, 2002,

Passed the Senate May 2, 2002,

by the following vote: 47 Ayes,

by the following vote: 28 Ayes,

3 Nays, 10 Not Voting

0 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

H.B. 2357

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

May 16, 2002,

by the following vote: 56 Ayes,

1 Nays, 3 Not Voting

[Signature]
Speaker of the House
Norman L. Moore
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

16 day of May, 2002,

at 3:00 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 26th day of

May, 2002,

at 10:13 o'clock A M.

[Signature]
Governor of Arizona

H.B. 2357

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of May, 2002,

at 12:13 o'clock P. M.

[Signature]
Secretary of State